



The Charge specifically alleges that the County has committed the following violations of 19 Del.C. §1307(a)(5).

First, the County has refused to apply the Step Three grievance answer of the Hearing Officer in Grievances #92-100, #93-75 and #94-43 involving a change in hours in the Sewer Maintenance Department to Grievance #94-08 involving a change in hours in the Finance Department, thereby causing the Union to relitigate the issue.

Secondly, by unilaterally changing the hours of employee(s) in the Finance Department, the County has breached the duty to bargain in good-faith in violation of §1307(a)(5), of the Act.

Thirdly, by refusing to schedule a Step Three meeting concerning Grievance #94-08, (the Finance Department grievance) the County has breached its duty to bargain in good-faith in violation of the Act.

In its Answer filed on December 4, 1996, the County denies each allegation and by way of New Matter alleges that: (1) the Petition fails to state a claim upon which relief can be granted; (2) the matter should be deferred to arbitration; and (3), failing to schedule a step 3 meeting for Grievance #94-08 does not constitute an unfair labor practice.

#### DISCUSSION

The Hearing Officer, in his February 9, 1996 decision, determined the issue before him in Grievances #92-100, #93-75 and #94-43, to be;

Did the County violate the Collective Bargaining Agreement by unilaterally changing the work hours of the Sewer Maintenance Staff from 7 a.m.-3 p.m. to 8 a.m.-4 p.m.? If so, what shall the remedy be?

The collective bargaining agreement between the Union and the County provides, at §11:

(a) Any grievance or dispute which may arise between the parties concerning the wages, hours and working conditions and the

application or interpretation of this agreement shall be taken up in accordance with the procedure outlined below.

The contract language is clear and unambiguous in establishing that the contractual dispute resolution procedure negotiated by the parties applies in the singular to "any grievance or dispute." As recognized by the contract language, grievances are the product of unique circumstances. Absent an agreement by the parties to the contrary, individual grievances are entitled to be processed through the negotiated grievance procedure which provides the opportunity for the parties to present evidence and argument in support of their respective positions.

The County acknowledges at paragraph 5 of its Answer, that the underlying issue in the Finance Department grievance is the same as that in the Sewer Department grievances. Issue identity alone, however, does not dictate the application of the doctrine of arbitral res judicata which, among other considerations, also requires identity of facts. The proper forum for presenting argument concerning the impact of a prior grievance settlement is within the contractual grievance procedure.

For this reason, the County's refusal to accept the resolution of the grievance involving the Sewer Maintenance Department as also dispositive of the grievance involving the Finance Department does not constitute proper cause to believe that an unfair labor practice may have occurred.

Secondly, Grievance #94-08 protesting the unilateral change in hours in the Finance Department was filed on January 14, 1994, approximately eight (8) months prior to the effective date of 19 Del.C. Ch. 13, the statute allegedly violated.

The provisions of the statute are not retroactive. Therefore, a change in hours preceding the effective date of the Act does not constitute probable cause to believe that an unfair labor practice in violation of §1307, may have occurred.

Finally, the grievance procedure is expressly defined to be a term and condition of employment which is a mandatory subject of bargaining in §1302(q) of

the PERA. Alleged violations of §1307(a)(5) of the Act must be resolved based upon the particular facts and circumstances of each incident.

In paragraph 5 of its Answer, the County denies refusing to schedule Grievance #94-08 for a Step Three hearing. Conversely, under New Matter, the County contends that "The County's not scheduling the instant matter for a Step III Hearing is not an Unfair Labor Practice."

Therefore, the allegation set forth in paragraph 12 of the Complaint concerning the County's continuing refusal to schedule Grievance #94-08 for a Step Three grievance hearing constitutes probable cause to believe that an unfair labor practice may have occurred.

#### **DECISION**

1. The allegation set forth in paragraph 11 of the Complaint concerning the impact of the grievance settlement in the Sewer Maintenance Department as dispositive of the pending grievance in the Finance Department is dismissed.

2. The allegation set forth in paragraph 11 concerning the unilateral change in hours of employee(s) in the Finance Department is dismissed.

3. Resolution of the allegation set forth in paragraph 12 of the Complaint concerning the County's refusal to process Grievance #94-8 requires an evidentiary hearing for the purpose of establishing a factual record upon which a decision can be rendered.

**IT IS SO ORDERED:**

January 31, 1997  
(Date)

/s/ Charles D. Long, Jr.  
Charles D. Long, Jr.  
Executive Director